

**SURVEY OF EMOTIONAL DISTRESS AND  
PUNITIVE DAMAGES AWARDS IN EXCESS OF \$100,000**

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Federal courts commonly strike down or remit emotional distress and punitive damages awards in employment cases. Last year, I experienced first hand such "judicial activism" when a district court, upon post-trial motion, remitted a jury's emotional distress and punitive damages award of \$1,050,000 to \$50,000.

It is well established that a reviewing court should defer to a jury in its role of assessing damages. Dagnello v. Long Island R.R., 193 F. Supp. 552, 553 (S.D.N.Y. 1960) ("The primary responsibility for the assessment of damages rests upon the jury, which is allowed a wide area of discretion, particularly where damages are not capable of exact or slide-rule calculation"). Deference to the jury is particularly warranted where the award is based on intangible harms, such as mental anguish, where the injury is subjective and evaluating it depends upon the demeanor of the witnesses. See Patterson v. P.H.P. Healthcare Corp., 90 F.3d 927, 937-38 (5th Cir. 1996) (while paying lip service to the jury's role in assessing damages, the court, nonetheless, reduced the district court's \$40,000 emotional distress award to nominal damages, where plaintiff's testimony about his distress from hearing his supervisor calling him a "porch monkey" and "nigger" was deemed not sufficiently specific evidence of emotional harm.)

In theory, federal courts will let stand a jury's damages award unless it is so excessive as to "shock the judicial conscience." See, e.g., Scala v. McCormack Lines, Inc., 985 F.2d 680, 683 (2d Cir. 1993). In reviewing whether damages are excessive, the court should



“view the evidence and draw all factual inferences in favor of the [plaintiff].” *Id.*, 985 F.2d at 683 (citation omitted).

In practice, however, the federal courts appear to use a lower standard than “shocks the judicial conscience” when reviewing damages awards in employment cases. At least in employment cases, judges seem to do less searching of their conscience and more comparing the amount of emotional distress and punitive damages given other plaintiffs. Put differently, in deciding whether to affirm or remit the jury’s award of emotional distress and punitive damages, courts take their cue from what other courts have awarded in comparable cases, rather than deferring to the judgment of the jury.

In defending emotional distress or punitive damages awards, it is essential that plaintiffs’ attorneys refer the reviewing court to other employment cases in which substantial awards have been affirmed. With that in mind, I have compiled the following list of employment cases where courts have upheld emotional distress or punitive damages awards for \$100,000 or more. The cases come from all jurisdictions (with a focus on New York State and within the Second Circuit) and pertain to all matters of employment litigation. I have relied upon, and supplemented, the case lists contained in Lisa R. Lipman’s Survey of Damage Awards In Recent Employment Cases, presented at St. John’s University School of Law, Employment Law Institute, NY State Bar Ass’n, May 1997, and Wayne N. Outten and Nancy Steward’s “Survey of Emotional-Distress Awards Under Federal, State and New York City Anti-Discrimination Laws” (1997).

## I. PAIN AND SUFFERING AWARDS

### A. Second Circuit and New York

- (1) In Petramale v. Local No. 17 of Laborers Int'l, 847 F.2d T009 (2d Cir. 1988), the Second Circuit remitted a \$200,000 compensatory award to **\$100,000**. The claim for emotional damages was based solely on the plaintiff's own testimony, no medical testimony was presented, and the plaintiff did not seek medical help. Plaintiff testified that as a result of his union's retaliatory action he suffered from nervousness, sleeplessness, marital problems and injured reputation.
- (2) In Bick v. City of New York, 1998 U.S. Dist. LEXIS 5543 (S.D.N.Y. April 21, 1998), the district court remitted a compensatory damages award from \$750,000 to **\$100,000** where a police officer who was subjected to sex discrimination suffered from serious, but not debilitating, mental anguish.
- (3) In Broome v. Biondi, 1997 U.S. Dist. LEXIS 17349 (S.D.N.Y. Nov. 5, 1997), the court held that **\$230,000** in emotional damages awarded to a married couple does not "shock the conscience" even though there was no professional testimony of psychological harm arising from cooperative board's refusal to sell an apartment to an inter-racial couple.
- (4) In Ginsberg v. Valhalla Anesthesia Assoc.'s, 1997 U.S. Dist. LEXIS 16681 (S.D.N.Y. Oct. 27, 1997), the court, while entering a remittitur, found warranted compensatory damages of **\$100,000**, even though plaintiff presented little evidence regarding her emotional distress. Plaintiff did see a psychiatrist for a year.
- (5) In Ikram v. Waterbury Bd. of Educ., 1997 U.S. Dist. LEXIS 14619 (D. Conn. Sept. 9, 1997), a free speech/retaliation case, the court affirmed **\$100,000** award for emotional and mental injury that had lasted more than one year. Plaintiff also experienced physical manifestations of her distress.
- (6) In Ramirez v. N.Y.C. Off-Track Betting Corp., 1996 U.S. Dist LEXIS 5715 (S.D.N.Y. April 30, 1996), aff'd in relevant part and rev'd in part, 112 F.3d 39 (2d Cir. 1997), a Title VII case, the jury award of \$1,434,375 for pain and suffering was remitted to **\$500,000**. Substantial evidence demonstrated that the loss of employment and benefits and the emotional pain from being arbitrarily and summarily dismissed aggravated plaintiff's psychological condition to such an extent that he ceased to be able to function in society. The court also noted that there was substantial evidence that these effects would persist into the indefinite future.
- (7) In Shea v. Icelandair, 925 F. Supp. 1014 (S.D.N.Y. 1996), an age discrimination case, the court remitted the jury award of \$250,000 for pain and suffering to **\$175,000**. Plaintiff endured a campaign aimed at forcing his retirement,

ultimately leading to his demotion. The stress from the age-based discriminatory treatment contributed to the development of Parkinson's and heart disease. Plaintiff also testified that immediately following the demotion he began experiencing depression and anxiety for which he sought medical treatment, and, through the time of the trial, continued to suffer humiliation, shame and fear.

- (8) In Marfia v. T.C. Ziraat Bankasi, New York Branch, 903 F. Supp. 463 (S.D.N.Y. 1995), vacated and remanded on other grounds, 100 F.3d 243 (2d Cir. 1996), the court let stand a compensatory award of **\$100,000** where plaintiff was harassed and fired due to his national origin. The plaintiff tried to kill himself and spent two weeks under suicide watch.
- (9) In Dailey v. Societe Generale, 889 F. Supp. 108 (S.D.N.Y. 1995), aff'd on other grounds, 108 F. 3d 451 (2d Cir. 1997), the district court upheld a compensatory damages award of **\$100,000** in a Title VII discrimination and retaliation case. There was no discussion on the nature of the emotional injuries plaintiff suffered.
- (10) In Matter of Town of Hempstead v. State Div. of Human Rights, 649 N.Y.S. 2d 942 (2d Dep't 1996), the court affirmed compensatory awards of **\$200,000** to **\$500,000** for sexual harassment plaintiffs even though there was no indication that they had sought therapy.
- (11) In Smith v. Tiffany & Co., No. 1B-E-CS-84-97230 (New York State Div. of Human Rights, Aug. 11, 1995), aff'd, 224 A.D. 2d 332, 638 N.Y.S.2d 454 (1st Dep't 1996), the court affirmed an award of **\$300,000** in compensatory damages where plaintiff was subjected to sexual harassment and then discharge, resulting in severe depression, anorexia and insomnia.
- (12) In New York City Police Dep't. v. DeLeon, 201 A.D. 2d 260, 608 N.Y.S.2d 827 (1st Dep't), lv. denied, 83 N.Y.2d 757, 615 N.Y.S. 2d 874 (1994), the court held that the complainant's testimony about the mental anguish he suffered as a result of being subjected to unlawful retaliation was sufficient to support an award of **\$250,000** although no medical evidence was presented.
- (13) In Sogg v. American Airlines, 193 A.D.2d 153, 603 N.Y.S. 2d 21 (1st Dep't 1993), the appellate court affirmed the trial court's remittur of the award for mental anguish from \$1,125,000 to **\$400,000** where the plaintiff was denied a promotion and subsequently fired for discriminatory reasons.
- (14) In New York City Transit Auth. v. State Div. of Human Rights, 78 N.Y.2d 207, 573 N.Y.S 2d 49 (1991), on remittur, 181 A.D. 2d 891, 581 N.Y.S.2d 426 (2d Dep't 1992), the court upheld an emotional distress damages award of **\$450,000** where there were four separate episodes of sex-based discriminatory conduct, causing her mental anguish, guilt, depression and anger. The plaintiff's detailed testimony was supported by her doctor's testimony and other medical evidence. In one episode, the Transit Authority refused her doctor's pregnancy-related

request that she be allowed to stop driving a bus; a miscarriage followed causing guilt and depression.

- (15) In McIntyre v. Manhattan Ford, Lincoln-Mercury, Inc., N.Y.L.J. Sept. 11, 1997, at 25, N.Y. 128889/94 (Sup. Ct. N.Y. Cty. 1997), the trial court remitted the jury's \$1.3 million pain and suffering award to **\$650,000** where a female service representative at automobile dealers garage endured unrelenting abuse on an almost daily basis for more than two years causing depression, anxiety, loss of appetite, lack of desire to attend work, humiliation and nightmares.

#### B. Outside The Second Circuit And New York

- (1) In Kim v. Nash Finch Co., 123 F.3d 1046 (8th Cir. 1997), a racial discrimination case, the court affirmed a pain and suffering award, as reduced by the district court, of **\$100,000**, even in the absence of medical testimony, where plaintiff and family members testified about his anxiety, sleeplessness, stress, depression, high blood pressure, headaches and humiliation.
- (2) In Shaw v. HCA Health Services, 79 F.3d 99 (8th Cir. 1996), an age discrimination case, the court affirmed the jury's verdict which included **\$125,000** in compensatory damages.
- (3) In Bolden v. Southeastern Pennsylvania Transp. Auth., 21 F.3d 29 (3d Cir. 1994), where a governmental employee was subjected to an unconstitutional drug test, the court affirmed a **\$250,000** compensatory award even though there was no evidence of counseling or physical manifestations of stress, and no showing of loss of reputation. The court found persuasive the testimony of four persons who stated that plaintiff had changed a great deal in the wake of the drug test.
- (4) In Kientzy v. McDonnell Douglas Corp., 990 F.2d 1051 (8th Cir. 1993), the Court of Appeals upheld the district court's refusal to remit the emotional distress award of **\$150,000** to a female security guard who was terminated from her position because of her sex. A licensed counselor testified that the plaintiff suffered from an adjustment disorder as a result of the employer's treatment.
- (5) In Keenan v. City of Philadelphia, 983 F.2d 459 (3d Cir. 1992), the court upheld a compensatory damages verdict (economic and non-economic damages were not distinguished) for five plaintiffs in the amount of **\$640,000** where lay testimony and expert witness testified about the emotional stress resulting from harassment.
- (6) In Kinsey v. Salado Independent Sch. Dist., 916 F.2d 273 (5th Cir. 1990), vacated en banc on other grounds, 950 F.2d 980 (5th Cir. 1992), a First Amendment case, the Fifth Circuit upheld an award of **\$250,000** to a suspended school superintendent for emotional distress, loss of reputation, personal expenses, and other monetary injuries. The award was based on the plaintiff's

testimony as to the anguish, embarrassment, anxiety and loss of reputation that he suffered.

- (7) In Dias v. Sky Chefs, Inc., 919 F.2d 1370 (9th Cir. 1990), vacated and remanded on other grounds, 501 U.S. 1201 (1991), 948 F.2d 532 (9th Cir.), cert. denied, 503 U.S. 920 (1992), the court approved an emotional distress verdict of **\$125,000** for plaintiff, who, as a result of retaliatory discharge, became depressed, suffered eating and sleeping disorders, and psychological problems which prevented her from returning to the workforce and led her to accept welfare for the first time in her life. Plaintiff received ongoing psychological treatment for her problems.
- (8) In Moody v. Pepsi-Cola Metro. Bottling Co., 915 F.2d 201 (6th Cir. 1990), an age discrimination case, the Sixth Circuit affirmed a **\$150,000** emotional distress award based on plaintiff's testimony that as a result of his discharge he was shocked and humiliated, had to move away from his family in order to secure employment, and according to his wife, was "upset to the point of crying."
- (9) In Southwest Forest Indus., Inc. v. Sutton, 868 F.2d 352 (10th Cir. 1989), cert. denied, 494 U.S. 1017 (1990), the court found that a **\$100,000** award for emotional distress relating to retaliatory discharge was not excessive under Kansas law, where plaintiff was humiliated by being falsely accused of lying on his employment application and, after his discharge, his wife had to clean houses to support the family.
- (10) In Rowlett v Anheuser-Busch, Inc., 832 F.2d 194, 206 (1st Cir. 1987), the court upheld an emotional distress award of **\$123,000** to a black employee who endured several years of discrimination at work and, after his discharge, a significant period of unemployment.
- (11) In Walters v. City of Atlanta, 803 F.2d 1135 (11th Cir. 1986), the court upheld a **\$150,000** emotional distress award to a plaintiff who had been repeatedly denied a position for which he was well qualified. The award was based on the plaintiff's testimony as to the frustration and emotional "wear and tear" surrounding his repeated efforts to obtain employment, as well as the testimony of another witness regarding the extreme frustration experienced by victims of discrimination.
- (12) In Stallworth v. Shuler, 777 F.2d 1431 (11th Cir. 1985), the Eleventh Circuit upheld a **\$100,000** award based on testimony that the plaintiff suffered emotional distress, loss of sleep, marital strain and humiliation because of racial discrimination, notwithstanding defendants' objection that he did not consult professional help and did not miss work. The court also observed that "the jury could have inferred emotional distress from the income he lost as a result of [his discharge]."
- (13) In Muldrew v. Anheuser-Busch, Inc., 728 F.2d 989 (8th Cir. 1984), the court upheld a compensatory damage award of **\$125,000** where, as a result of his

racially motivated discharge, plaintiff lost his house and car, experienced marital problems and was disrespected by his children.

- (14) In Neal v. Honeywell, 995 F. Supp. 889 (N.D. Ill. 1998), aff'd on other grounds, 33 F.3d 860 (7th Cir. 1994), a whistleblowing case, the court remitted a compensatory damages award of \$550,000 to **\$200,000**. Psychologist supported plaintiff's testimony that she was depressed for one year after her discharge.
- (15) In Blakey v. Continental Airlines, Inc., 992 F. Supp. 731 (D.N.J. 1998), the court remitted the compensatory damages award of \$500,000 to **\$250,000** where the plaintiff was victimized by pornography and an incident of sexual touching at the job, causing her to see a psychologist approximately 25 times.
- (16) In Martini v. Federal Nat'l Mortgage Ass'n, 977 F. Supp. 464 (D.D.C. 1997), a sexual harassment and retaliation case, the court remitted the jury's multi-million dollar emotional pain and suffering award to **\$215,000** against defendant Fannie Mae and the individual defendants. Plaintiff had introduced testimony from her physician and dentist that she suffered from stomach pains and grinding teeth as a result of the harassment. Plaintiff also testified about her humiliation and distress when terminated from her high level position and escorted out of the office by a security guard.
- (17) In Nyman v. F.D.I.C., 967 F. Supp. 1562 (D.D.C. 1997), plaintiff prevailed in her retaliation, but not discrimination, claim. Plaintiff established that, even though she was not fired, she developed hypertension as a result of the stress arising from her employer's conduct; compensatory damages were remitted from \$300,000 to **\$175,000**.
- (18) In Hurley v. Atlantic City Police Dep't, 933 F. Supp. 396 (D.N.J. 1996), the district court reduced female police officer's compensatory damages award from \$575,000 to **\$175,000** under New Jersey law. Plaintiff presented expert testimony that as a result of sexual harassment she suffered an adjustment disorder, anxiety, and depression necessitating a daily regimen of anti-depressant medication. Also, plaintiff's family life deteriorated and she was forced to take stress-related leave from work.
- (19) In Rush v. Scott Specialty Gases, Inc., 930 F. Supp. 194 (E.D.Pa 1996), rev'd and remanded on other grounds, 113 F.3d 476, 480 (3d Cir. 1997), the court, after remittur, awarded plaintiff **\$100,000** damages for emotional distress. Plaintiff proved that she suffered emotional distress for the four years she worked at the company; an expert witness testified that she suffered mild to moderate depression; and friends testified to an alteration in her personality due to discriminatory work environment.
- (20) In Dickerson v. HBO & Co., et al, 1995 U.S. Dist. LEXIS 19213 (D.D.C. Dec. 21, 1995), the court upheld a **\$100,000** compensatory damages jury award on the

basis of plaintiff's own testimony that the employer's retaliatory treatment, including demotion and shift transfer, caused him humiliation, emotional distress, and adversely affected his family relations.

- (21) In Moreno v. Consolidated Rail Corp., 909 F. Supp. 480 (E.D. Mich. 1994), aff'd, 99 F.3d 782 (6<sup>th</sup> Cir. 1996), a Rehabilitation Act case, a 30-year employee with diabetic and vascular conditions was discharged. The court upheld a jury award of **\$125,000** in compensatory damages despite the plaintiff's failure to seek professional counseling.
- (22) In Webb v. Hyman, 861 F. Supp. 1094 (D.D.C. 1994), a sexual harassment case, the court upheld a verdict of **\$225,000** against the employer and **\$75,000** against the individual harasser for emotional trauma where plaintiff was subjected to repeated sexual assaults and retaliatory tactics. Plaintiff's psychologist testified that the harasser's actions re-kindled repressed feelings about her childhood molestation and caused her post-traumatic stress disorder.
- (23) In Berry v. Stevinson, 804 F. Supp. 121 (D. Colo. 1992), a non-jury case, the court awarded **\$250,000** award for emotional distress and loss of reputation stemming from the employer's retaliatory filing of false criminal complaint against the former employee.
- (24) In Stockett v. Tolin, 791 F. Supp. 1536 (S.D. Fla. 1992), the court granted plaintiff **\$250,000** in emotional distress damages for her common law claims where she was subjected to repeated sexual assault in the workplace, for which she suffered ongoing distress.
- (25) In Lowery v. WMC-TV, 658 F. Supp. 1240, 1266-67 (W.D. Tenn. 1987), vacated by settlement, 661 F. Supp. 65 (W.D. Tenn. 1987), after a bench trial, the court awarded a black television news anchor **\$100,000** in compensatory damages for embarrassment, humiliation and mental anguish. The plaintiff had been demoted, but not fired, and there was no proof of psychological counseling.
- (26) In Eckman v. Bd. of Educ. of Hawthorn Sch. Dist., 636 F. Supp. 1214 (N.D. Ill. 1986), the court remitted a \$2,000,000 compensatory damages award to **\$750,000** where unmarried school teacher was discharged because of pregnancy but was reinstated.

## II. PUNITIVE DAMAGES AWARDS

- (1) In Kim v. Nash Finch Co., supra, the court affirmed a remitted punitive damages award of **\$300,000** where despite the employer having known what constitutes unlawful conduct, it systematically retaliated against plaintiff for filing an employment discrimination claim and attempted to discredit plaintiff by papering his personnel file. The underlying discrimination claim involved disparate treatment undertaken by supervisors and management.

- (2) In Kimzey v. Wal-Mart Stores, Inc., 107 F.3d 568 (8th Cir. 1997), the court remitted \$5,000,000 punitive damages award to \$350,000. The store manager sexual harassed plaintiff and Wal-Mart management repeatedly ignored complaints about his conduct.
- (3) In Coleman v. Kaye, 87 F.3d 1491 (3d Cir. 1996), a § 1983 action, the court reinstated a \$350,000 punitive damages award against the County of Monmouth and an additional \$50,000 in punitive damages against the county prosecutor in his individual capacity, where defendants failed to promote female on three occasions.
- (4) In EEOC v. Farmer Bros. Co., 31 F.3d 891 (9th Cir. 1994), the Court of Appeals affirmed a punitive damages award of \$800,000 where the district court found that the defendant implemented a fraudulent RIF in order to eliminate females from the ranks of production workers. Defendant's president was quoted as saying, "the only people you will be seeing running the lines will be men; there will be no more women hired."
- (5) In Kientzy v. McDonnell Douglas Corp., *supra*, a Missouri Human Rights Law action, the court affirmed a punitive damages award of \$400,000 where chief of company's security guard service disciplined the only female lieutenant for eating lunch at home, yet in three years never had disciplined any of the male employees.
- (6) In Keenan v. City of Philadelphia, *supra*, the court upheld the remitted punitive damages award of \$666,000 against a police captain who subjected a female detective to sex discrimination, and his two supervisors, who failed to intercede to stop the discrimination, and who approved the captain's retaliatory transfer of plaintiff.
- (7) In Dias v. Sky Chefs, Inc., *supra*, the court upheld \$500,000 punitive damages as an appropriate penalty and deterrent where plaintiff was fired for resisting sexual harassment at the workplace.
- (8) In Southwest Forest Industries v. Sutton, *supra*, the court upheld a \$1,000,000 punitive damages award where the evidence showed that the employer discharged plaintiff for filing a workers' compensation claim and its own records showed that the employer's proffered reason for the discharge (lying on his employment application) was false.
- (9) In Rowlett v Anheuser-Busch, Inc., *supra*, the court remitted a punitive damages award from \$3,000,000 to \$300,000 even though racial discrimination was only "subtle" and "hardly overwhelming."
- (10) In Marfia v. Ziraat Bankasi, New York Branch, *supra*, the district court upheld a \$1 million punitive damages award to former employer where jury could have

reasonably inferred ill will or callousness on the part of defendant's officer from the many discriminatory comments he made about plaintiff's Italian heritage.

- (11) In Martini v. Federal Nat'l Mortgage Ass'n, supra, a sexual harassment and retaliation case, a multi-million punitive damages award was reduced to **\$235,000** against the corporate and individual defendants. The court determined that the evidence was sufficient to prove that defendants consciously disregarded plaintiff's rights by failing to take action to investigate or correct the harasser's conduct, failing to follow applicable procedures for processing plaintiff's complaint, promoting the alleged harasser in the face of plaintiff's complaints, and then allowing the harasser to design a reorganization plan that eliminated plaintiff's job.
- (12) In Lawyer v. 84 Lumber Co., 991 F. Supp. 973 (N.D. Ill. 1997), a racial discrimination case, the court remitted a punitive damages award from \$250,000 to **\$150,000** where compensatory damages were \$50,000 and the case was "not the most reprehensible."
- (13) In Ikram v. Waterbury Bd. of Educ., supra, the court approved a **\$150,000** punitive damage award against three individual defendants who had fired plaintiff in retaliation for exercising her First Amendment rights.
- (14) In Hurley v. Atlantic City Police Dept., supra, the court upheld a punitive damages award of **\$700,000** under the New Jersey Law Against Discrimination where an "unprofessional atmosphere of intolerance and misogyny suffused" the police department; some of the harmful conduct involved directly upper management; the punitive damages award was four times the amount of the compensatory damages.
- (15) In Stockett v. Tolin, supra, the court awarded a victim of sexual harassment **\$1,055,000** in punitive damages where the employer's conduct was egregious and willful ("the business belonged to him" and he "could do what he wanted"), and was fabulously wealthy.
- (16) In Laughinghouse v. Risser, 786 F. Supp 920, 927 (D. Kan. 1992) the court upheld a jury's punitive damages award of **\$600,000** against employer for claims of outrage and intentional infliction of emotional distress where supervisor, following plaintiff's refusal of his sexual proposition, acted in a "barbaric and vulgar" manner toward her.